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Whatcom Chapter

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Whatcom County Planning Commission
Whatcom County Department of
Planning & Development Services
Bellingham, Washington 98226

Re: Transportation Impact Fees, Transportation Concurrency

Futurewise Whatcom strongly supports policies that account for the full cost of future residential development in Whatcom County. We applaud the county for moving forward with Transportation Impact Fees, and thank staff for working to incorporate comments from the public and members of the Commission into the current proposal. We support the proposal before the Commission; albeit with some concern over three specific items.

First, as noted in our August 14 public comment, we found the fees as originally proposed to be too low. The consultant's report shows that only \$23 million of the approximately \$83 million to be spent on these capital projects will be recovered by impact fees as they were originally proposed (page 16). The proportion covered by the original TIFs (based on a 50% trip end factor) appears even smaller when the total transportation requirements of \$435 million are considered. When viewed from this point, the TIFs as originally proposed will collect only 4% of projected costs. The consultant and staff have now supplied new estimates of fees based on 100% trip end factor. The general taxpaying public will continue to fund the vast majority of infrastructure improvements under TIFs based on either the 50% or 100% trip end factor. We support TIFs based on a level closer to the 100% trip end factor, since that takes a bit more of the burden off the general Whatcom County taxpayer. The entire county benefits from having new development bear part of the costs new transportation infrastructure required to service growth. If TIFs provide a greater proportion of such funds, there will be more County money available for maintenance and to address existing deficiencies and safety problems.

Second, we oppose a new clause that has been proposed for Chapter 6 of the Comprehensive Plan. The proposed policy element 6A-7 provides that "[i]f a development application is denied because it would cause the level of service on a county transportation facility to fall below the adopted LOS, consideration should be given to defining this as an emergency for the purpose of the ability to revise the comprehensive plan's adopted land use allocations or LOS." The purpose of concurrency is to match growth with the transportation facilities needed to serve that growth. We believe the county should prepare a transportation plan that will adequately serve the county's proposed 20-year growth over the 20-year planning period. A project may fail the level of service standards in one year, but the county may be planning the needed improvements in seven, or ten, or 12 years. Amending the comprehensive plan every time a project fails concurrency will interfere with effective long-range planning. Where future transportation improvements are planned, amending the land use allocation will mean that the

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planned future transportation facilities may no longer match the population allocation. Change the LOS may mean that an unacceptable level of congestion will occur. The better approach is to monitor the concurrency system and consider amendments in an orderly fashion during periodic updates where population growth, transportation facilities, and capital facilities can be considered comprehensively with adequate public involvement, not to amend the comprehensive plan every time concurrency approval is denied. That would be the opposite of comprehensive planning.

Third, Futurewise legal staff in Seattle suggest that some of the language in the proposal regarding exemptions to the concurrency requirement may be inconsistent with recent state Court rulings. The proposal may be stronger if this issue is addressed. Specifically, proposed section 20.78.030 provides for a variety of exemptions from the transportation concurrency requirement. The Court of Appeals has held that “[u]nder the clear and plain language of RCW 36.70A .070(6)(b), [cities and counties] cannot create exemptions to its concurrency ordinance.” *City of Bellevue v. East Bellevue Community Mun. Corp.*, 119 Wn. App. 405, 414, 81 P.3d 148, 153 (2003), review denied *City of Bellevue v. East Bellevue Community Mun. Corp.*, 152 Wn.2d 1004, 101 P.3d 865 (2004). *City of Bellevue v. East Bellevue Community Mun. Corp.* upheld *Bennett, et al. v. City of Bellevue*, CPSGMHB Consolidated Case No. 01-3-0022c Final Decision and Order (April 8, 2002). In *Bennett* “[t]he Board understands and respects the City’s desire to facilitate redevelopment – however, it may not do so by carving out concurrency exemptions for the very kind of ‘development [redevelopment of neighborhood shopping centers]’ permits that a concurrency ordinance must ‘assure’ will be denied.” There are also GMA complaint methods of achieving redevelopment, such as amending the level of service standards and using transportation projects or programs to accommodate the development.” *Id.* at 12 -- 13 of 18. What some counties do is for development that will not affect transportation system they use a lower LOS, for some even use LOS “F” and an abbreviated review process.

Thank you for the time and effort you've put in crafting this proposal.

Sincerely,

Todd Donovan
Futurewise Whatcom Steering Committee Member

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cc: David Stalheim, Dept. of Planning & Development Services
Gary Davis, Senior Planner